

## FEDERAL RESPONDENTS' FIFTEENTH STATUS REPORT ON REMEDY COMPLIANCE

Petitioners challenged four decisions of the Bureau of Land Management (“BLM”) which approved leasing of approximately 16,000 acres of federal coal near Wright, Wyoming (collectively known as the Wright Area leases), based on alleged violations of the National Environmental Policy Act and other statutes. On November 27, 2017, the Court entered an order remanding the four decisions to BLM, as well as the final environmental impact statement (“FEIS”) which supported them, in accord with an order of the Tenth Circuit in *WildEarth Guardians v. United States Bureau of Land Management*, 870 F.3d 1222 (10th Cir. 2017). ECF No. 196. The latter order had found legal error in the FEIS’s required “no action” alternative. The November 2017 order calls for revision of the FEIS and decisions in regard to the “no action” alternative and its reliance on what the Tenth Circuit referred to as the “perfect substitution assumption.”<sup>1</sup>

As Federal Respondents reported in a Notice of Compliance filed June 4, 2019, ECF No. 240, they completed the required effort and complied with the terms of the remedy order by posting on the BLM website an environmental assessment (“EA”), a Finding of No Significant Impact (“FONSI”), and a decision record. The web posting occurred on June 3, 2019. The EA reexamines the FEIS’s “no action” alternative and

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<sup>1</sup> This assumption underlay the FEIS’s conclusion (addressing impacts of the required “no action” alternative) that there was, as the Tenth Circuit stated it, “no real world difference between issuing the Wright area leases and declining to issue them because third party sources of coal would perfectly substitute for any volume lost on the open market should the BLM decline to issue the leases . . . .” *Id.* at 1233. Because of this assumption, the Tenth Circuit found the “no action” alternative deficient due to a lack of supporting data. *Id.*

addresses the deficiencies found by the Tenth Circuit. In addition to the EA, FONSI, and decision record, BLM also posted extensive public comments on the draft EA received during a sixty-day comment period and BLM's responses to those comments. The final EA reflects changes (relative to the draft EA) that are the direct result of comments received. The decision record reaffirms the four decisions, based on the analysis of the EA and FEIS. These documents may be found at the BLM website at:

<https://eplanning.blm.gov/epl-front-office/eplanning/projectSummary.do?methodName=renderDefaultProjectSummary&projectId=97202>

Respectfully submitted this 5th day of June, 2019.

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/s/ John S. Most

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**CERTIFICATE OF SERVICE**

I certify that on June 5, 2019, I electronically filed the foregoing with the Clerk of the U.S. District Court of Wyoming using the CM/ECF system, thereby causing a Notice of Electronic filing to be sent to the attorneys of record in this action.

/s/ John S. Most  
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